IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application of

John C. Jaeger

Serial No.: 10/773,346

Filed: February 9, 2004

For: SPECULUM

APPEAL BRIEF

Peter N. Lalos, Esquire
Registration No.: 19,789
NOVAK DRUCE & QUIGG LLP
1300 Eye Street, NW
1000 West Tower
Washington, D.C. 20005
Telephone: (202) 659-0100
Facsimile: (202) 659-0105

Attorney for Appellant

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I REAL PARTY IN INTEREST

The real party in interest in the present application is Dr. John C. Jaeger.

II RELATED APPEALS AND INTERFERENCES

There are no related appeals known to Appellant which will directly affect, or be directly affected by, or have a bearing upon the Board's decision on the pending appeal.

III STATUS OF CLAIMS

Original claims 1 through 32 have been cancelled. Claims 33 through 35 and 37 through 41 have been rejected. Claim 36 has been objected to. The rejection of claims 33 through 35 and 37 through 41 is appealed herein.

IV STATUS OF AMENDMENTS

An amendment after final rejection has been filed to remedy several small errors in claims 34 and 41. Such amendment after final has been entered for the purposes of appeal.

V SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 33 recites an instrument insertable in a body cavity for dilating the cavity comprising a frame (Figure 1, reference numeral 100, page 5, lines 13-17) having an opening through a centerline thereof; a set of blades (Figure 1, reference numerals 110 through 140, page 5, lines 6-9) circumferentially spaced relative to the centerline, each having a first end (Figure 8, Reference numerals 115 through 145, page 5, lines 7 and 8) projecting beyond a first side of the frame section, a second end section (Figure 1 and 8, Reference numerals 116, 126, 136 and 146, page 5, lines 8 and 9) projecting beyond a second side opposite the first side of the frame and intermediate section pivotally connected to the frame (Figure 2, reference numerals 150, 151, 152 and 153, page 5, lines10 and 11) for pivotal movement relative to the frame in a plane including the centerlines; means (Figure 2, reference numerals 170, 171, 172 and 173, page 7, lines 3-12) operatively interconnecting the blades and the frames biasing the first ends thereof together into abutting relations; and means (Figure 1, reference numerals 1, 200, 201, 202 and 203, page 8, line 21, page 9, lines 1-4) mounted on the frame and operatively engageable with

the blades for biasingly restraining the pivotal movement of the blade, whereby with the first end sections biased together engaging first end sections (Figure 2, reference numerals 111, 121, 131 and 141, page 6, lines 4-10) maybe inserted into the cavity with the frame disposed in the exterior thereof, the second end sections may be drawn together against the biasing action of the first mentioned biasing means to cause a separation of the first end sections and thus dilate the cavity to permit visual access to the cavity through the frame, with the restraining means biasingly maintaining the first end sections apart, and upon completion of any procedure with which the instrument is used, the restraining means may be overcome to cause the first end section to pivot into engagement with one another to permit the first end sections of the instrument to be withdrawn from the cavity.

Claim 34 is depended on claim 33 and further recites the outer surfaces of the first end sections of the blades being provided with merging and contoured surfaces (Fig 2; page 6, lines 6-10) which operate when the first end sections engage to provide an elongated object with smooth surfaces facilitating the insertion and removal of the engaged first end sections into and out of the cavity.

Claim 35 is dependent on claim 33 and further recites each of the end sections of (Figures 1 and 6, page 6, lines 16-19) of each of the blades being disposed at and angle relative to the intermediate section thereof.

Claim 36 is depended on claim 33 and further provides for the means for biasing the first ends of the blades together into abutting relation comprising a set of springs (Figure 2, reference numerals 171, 172, 173 and 174, page 7, lines 3-12) each interconnecting the blade and the frame.

Claim 37 is depended on claim 33 and further recites the means biasingly restraining the pivotal movement of the blades comprising a set of blocks (Figure 2, reference numerals 201, 202, 203 and 204, page 8, lines 17-21, page 9, lines 1-4) each supported on the frame and biased into engagement with a surface of one of the blades.

Claim 38 is depended on claim 37 and further recites the block is provided with a surface (Figures 3 and 5, reference numeral 251, page 9, lines 7-12) of a non-planar configuration engaging the blade, restraining displacement of the engaging blade relative to the block.

Claim 39 is dependent on claim 33 further recites the frame comprising a unitary annular member (page 5, lines 13-17).

Claim 40 is depended on claim 33 and further recites the frame comprising a unitary member (Figure 2, reference numeral 100, page 5, lines 13-17) having a polygonal configuration.

Claim 41 is on depended on claim 33 and further provides for the second end section of each of the blades (Figures 1 and 6, reference numerals 116, 126, 136 and 146, page 7. lines 13-19) is pivotally connected to an outer portion of the frame, the intermediate section thereof extends to one side of the frame and into the opening thereof and the first end section thereof extends through the centerline, on the first end sections are disposed in abutting relation.

VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 33 through 35, 37 through 49 and 41 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,916,151 to Charters. Claim 40 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Charters.

VII ARGUMENT

A. The Charters patent fails to disclose each of the elements recited in each of claims 33 through 35, 37 through 39 and 41 and therefore does not anticipate such claims.

The Charter patent discloses an instrument which may be inserted into a body cavity for expanding such cavity for visual purposes. It essentially consists of an annular support frame 30, a set of elongated elements 11 extending through frame 30 and connected at inner set ends thereof to a resilient band 13, a tensioning device 50 provided with a string arrangement threaded through openings in the support frame and the elongated elements, which may be paid out or taken in to separate or draw together the insertable ends of the elongated elements, and a control device 60 provided with a string arrangement threaded through the inner ends of the elongated

elements which may be drawn together or released to also expand or contract the inner ends of the elongated elements, against the biasing action of resilient band 13. Clearly, the Charters instrument is constructed totally differently and operates entirely differently from the claimed device. It clearly is devoid of blades having intermediate sections pivotally connected to a frame member comparable to pivot pins 150, 151, 152 and 153, means operatively interconnecting the blades and the frames, biasing the ends thereof together into abutting relation comparable to springs 170, 171, 172 and 173 or means mounted on the frame on which the blades are pivotally connected, operatively engageable with the blades for biasingly restraining the pivotal movement of the blades comparable to members 200, 201, 202 and 203.

Resilient band 13 of Charters functions to normally maintain elongated elements in the positions as shown in Figure 1. It can be drawn together through the use of device 60 to spread the far ends of the elongated elements 11 apart as shown in Figure 3. Device 50 may be operated simply to draw the far ends of the elongated elements together as shown in Figure 9. Charters discloses an instrument which not only is diverse in construction to the claimed invention but operates in a far different and more complicated manner than the claimed invention.

In addition to the above, the Charter instrument lacks merging, contoured sections of the blades as recited in claim 34, each blade having an end section disposed at an angle relative to an intermediate section thereof as recited in claim 35, the biasing means of each blade comprising a spring interconnecting the blade and support frame as recited in claim 36, the means biasingly restraining the pivotal movement of the blades comprising a set of blocks supported on the frame and biased into engagement with the blades as recited in claim 37, each of the restraining blocks having a surface of a non-planar configuration engaging a blade as recited in claim 38 or the blades having configurations as recited in claims 41.

B. The structure of claim 40 would not be obvious in view of the Charters patent.

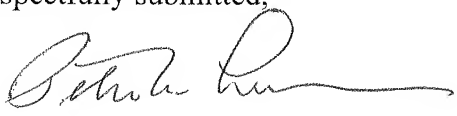
Appellant incorporates herein by reference that portion of the argument set forth in Section VII-A hereof, which relates to claim 33, as if repeated herein in its entirety. Appellant furthermore submits that Charter clearly fails to teach providing blades with configurations as recited in claim 33, pivotally connected at the intermediate sections thereof to a support frame as

provided, providing means interconnecting a frame to which the blades are pivotally connected and the blades, biasing the far ends of the blades together, and further providing means on a support frame engageable with the blades for biasingly restraining the pivotal movement of the blades.

VIII. CONCLUSION

In view of the fact that the Charter patent fails to disclose or teach the structure of the claimed invention, it respectfully is requested that the rejection of claims 33 through 35 and 37 through 41 be reversed.

Respectfully submitted,



Peter N. Lalos

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APPENDIX A: Claims on Appeal

33. An instrument insertable in a body cavity for dilating said cavity comprising:

a frame having an opening through a centerline thereof;

a set of blades circumferentially spaced relative to said centerline, each having a first end projecting beyond a first side of said frame section, a second end section projecting beyond a second side opposite said first side of said frame and an intermediate section pivotally connected to said frame for pivotal movement relative to said frame in a plane including said centerline;

means operatively interconnecting said blades and said frame biasing the first ends thereof together into abuting relation; and

means mounted on said frame and operatively engageable with said blades for biasingly restraining the pivotal movement of said blades,

whereby with said first end sections biased together, said engaging first end sections may be inserted into said cavity with said frame disposed in the exterior thereof, said second end sections may be drawn together against the biasing action of said first mentioned biasing means to cause a separation of said first end sections and thus dilate said cavity to permit visual access to said cavity through said frame, with said restraining means biasingly maintaining said first end sections apart, and upon completion of any procedure with which said instrument is used, said restraining means may be overcome to cause said first end section to pivot into engagement with one another to permit said first end sections of said instrument to be withdrawn from said cavity.

34. An instrument according to claim 33 wherein outer surfaces of the first end sections of said blades are provided with merging and contoured surfaces which cooperate when said first end sections engage to provide an elongated object with smooth surfaces facilitating the insertion and removal of said engaged first end sections into and out of said cavity.

35. An instrument according to claim 33 wherein each of the end sections of each of said blades is disposed at an angle relative to the intermediate section thereof.

37. An instrument according to claim 33 wherein said means biasingly restraining said pivotal movement of said blades comprises a set of blocks each supported on said frame and biased into engagement with a surface of one of said blades.

38. An instrument according to claim 37 wherein said block is provided with a surface of a nonplanar configuration engaging said blade, restraining displacement of said engaging blade relative to said block .

39. An instrument according to claim 33 wherein said frame comprises a unitary, annular member..

40. An instrument according to claim 33 wherein said frame comprises a unitary member having a polygonal configuration.

41. An instrument according to claim 33 wherein the second end section of each of said blades is pivotally connected to an outer portion of said frame, said intermediate section thereof extends to one side of said frame and into the opening thereof and said first end section thereof extends along said centerline, when said first end sections are disposed in abutting relation.

APPENDIX B: Evidence Appendix under 37 CFR §41.37(c)(1)(ix)

N/A

APPENDIX C: Related Proceedings Appendix under 37 CFR §41.37(c)(1)(x)

N/A